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July 26, 2021

BY ECF

**MEMO ENDORSED**

The Honorable Sidney H. Stein  
United States District Judge  
Southern District of New York  
500 Pearl Street  
New York, New York 10007

Re: *United States v. Jennifer Shah*, et al., 19 Cr. 833 (SHS)

Dear Judge Stein:

I represent Jennifer Shah in the above-referenced case. Last Thursday, July 22, Assistant U.S. Attorney Kiersten Fletcher sent a highly improper letter to Your Honor, (Dkt. 309), which she filed on the public record the night before Ms. Shah's counsel was set to argue her pre-trial motions before the Court. We respectfully request that the letter be stricken from the record and the government be ordered to refrain from making prejudicial statements about the defendant unless they are attached to an application to the Court.

The letter was ostensibly filed in connection with sentencing proceedings scheduled for next Monday, August 2, relating to defendants Derrek Larkin and Joseph DePaola—proceedings that have nothing to do with Ms. Shah. As far as we can glean, the government was trying to explain to the Court the relative culpability of Larkin and DePaola compared to others whom the Court has sentenced or who have pled guilty. Fair enough. But for some reason, the government chose to include *unadjudicated defendants*, including Ms. Shah—who has steadfastly maintained her innocence and is in the process of fighting these charges, including a pending and substantial motion to dismiss the indictment.

For no reason other than to prejudice the defendant in the eyes of the Court and the public,<sup>1</sup> the government included multiple statements about Ms. Shah's supposed "greater culpability" than all but

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<sup>1</sup> Unlike all of the other defendants, Ms. Shah is a public figure because of her work on the Bravo television network. The government is well aware of this, and timed its letter for the night before oral argument, knowing that it would be picked up by the press—which it was, and was reported in a highly prejudicial manner. See, <https://www.cinemablend.com/television/2570975/real-housewives-of-salt-lake-citys-jen-shah-responds-after-experiencing-setback-in-legal-case>; <https://www.the-sun.com/entertainment/3342734/rhoslc-jen-shah-accused-orchestrating-telemarketing-scam-suspect/>; <https://allaboutthetea.com/2021/07/26/rhoslcs-jen-shah-accused-of-orchestrating-telemarketing-scam/>;

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five others. Indeed, the letter devotes *much* more time to Ms. Shah than it does to either Larkin or DePaola, or indeed, virtually anyone else. That would not be objectionable if they were actually *asking* the Court for something regarding Ms. Shah. If this were the New York State Supreme Court down the street, we would understand, as judges have to know the facts of the case before they can engage in plea bargaining with the defense and the prosecution. But there is no place in a federal case to discuss the relative culpability of anyone before she has actually been *convicted*. See Fed. R. Crim. P. 11(c)(1) (“The court must not participate in [plea] discussions”).

As Your Honor will recall from oral argument on Friday, Ms. Shah’s team strenuously objects to using the *Ketabchi* case to paint Ms. Shah with the same brush as the defendants in that indictment. Yet the government continues to do so—as an excuse for not providing a bill of particulars or *Brady* material, and now in its gratuitous letter. The Court should hardly need to remind the prosecutors that while they “may strike hard blows, [they are] not at liberty to strike foul ones.” *Berger v. United States*, 295 U.S. 78, 88 (1935). Ranking a defendant who is *presumed innocent* with respect to others who have been *adjudicated guilty*—worse, declaring that that innocent defendant is one of those “responsible for orchestrating the broader scheme”—a is a textbook example of a “foul blow,” one we urge the Court not to countenance.

The July 22 letter, or at least the portions that relate to Ms. Shah, have no place on the public record. We urge the Court to order it stricken or at least redacted, and to remind the government that it should not file naked statements on the record absent an application for relief or the request of the Court.

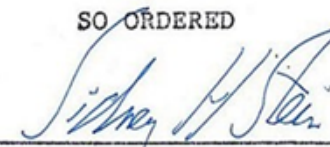
Respectfully submitted,



Priya Chaudhry

**Defendant’s application to strike the government’s letter [Doc. No. 309] is denied. The Court requested the government to provide in writing its views of the relative culpability of the defendants.**

**Dated: New York, New York  
July 29, 2021**

SO ORDERED  
  
 SIDNEY H. STEIN  
 U.S.D.J.

<https://amp.tzm.com/2021/07/23/rhoslc-star-jen-shah-accused-of-being-highly-culpable-in-telemarketing-scheme/>;  
<https://www.google.com/amp/s/www.realitytea.com/2021/07/26/jen-shah-orchestrator/amp/>;  
<https://www.google.com/amp/s/nypost.com/2021/07/23/jen-shah-orchestrated-fraud-scheme-against-elderly-feds/amp/>;  
<https://www.google.com/amp/s/people.com/tv/real-housewives-star-jen-shah-accused-orchestrating-telemarketing-scheme/%3famp=true>;  
<https://www.google.com/amp/s/www.thehollywoodgossip.com/2021/07/jen-shah-accused-of-leading-telemarketing-scheme-fbi-hones-in-on/amp/>.